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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,867	12/17/2001	Thomas Joseph Kopacz	1443.009US1	5354

7590 12/19/2005  
Schwegman, Lundberg, Woessner & Kluth, P.A.  
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Minneapolis, MN 55402

EXAMINER

BOYD, JENNIFER A

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 12/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/021,867	<b>Applicant(s)</b> KOPACZ ET AL.	
	<b>Examiner</b> Jennifer A. Boyd	<b>Art Unit</b> 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 September 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-16,20-26,28-31,33,40-57,59-63 and 65-90 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-16,20-26,28-31,33,40-57,59-63 and 65-90 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 29, 2005 has been entered. The Applicant's Amendments and Accompanying Remarks, filed September 29, 2005, have been entered and have been carefully considered. Claims 1, 3-5, 11-16, 20, 22, 28-31, 33, 50, 54, 57, 59, 65 and 72 are amended, claims 2 and 34-39 were previously canceled, claims 17-19, 27, 32, 58 and 64 are canceled herein, claims 73-90 are added; as a result, claims 1, 3-16, 20-26, 28-31, 33, 40-57, 59-63 and 65-90 are now pending in this application. In view of Applicant's Amendments, the Examiner withdraws all previously set forth rejections. After an updated search, additional prior art has been found which renders the invention as currently claimed unpatentable for reasons herein below. In response to the letter from Applicant received on October 17, 2005, it should be noted that, although an advisory action was mailed after the request for RCE was submitted, the RCE is proper.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 102***

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3. Claims 1, 5 - 7, 11 - 16, 22, 33, 50 - 57, 59, 63, 65 - 67, 71 - 75 and 79 - 86 are rejected under 35 U.S.C. 102(b) as being anticipated by Raidel et al. (WO 96/00625). It should be noted that the Examiner has relied upon Raidel et al. (US 6,171,682) as an English language equivalent of (WO 96/00625).

Raidel is directed to an absorbent article comprising a corrugated web (Title).

As to claims 1, 5 - 7, 16, 20 - 21, 28 - 31, 50, 60 - 62, 65 - 67 and 72 - 75, Raidel teaches an absorbent article in Figures 19 and 20 comprising an outer cover sheet 201, a pleated cover sheet 203, a pleated absorbent body 205 and a liquid impermeable cover sheet 204 (column 10, lines 45 - 65). The Examiner equates the outer cover sheet 201 and pleated cover sheet 203 to one of Applicant's "bi-layer structures" and the pleated absorbent body 205 and liquid impermeable cover sheet 204 to the other of Applicant's "bi-layer structures". Raidel does not teach or suggest the use of elastic materials or fibers; the Examiner submits that the limitation of having "no elastic materials or fibers between the outer layers" has been met by Raidel. As shown in Figures 19 and 20, Raidel shows the pleated layers as oriented inwardly and having opposing bondable projections. It should be noted that Applicant requires that the projections are "bondable" and does not require that they are actually bonded. The Examiner equates the pleats to Applicant's "tufts". Raidel teaches that the thickness of the pleated material can range from 1 - 3 as required by Applicant (column 11).

As to claims 11 and 71, as shown in Figures 19 and 20, Raidel shows the pleated layers as oriented inwardly and having opposing bondable projections. It should be noted that Applicant requires that the projections are "bondable" and does not require that they are actually bonded.

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As to claims 12 – 15 and 51 - 53, Raidel teaches that the thickness of the pleated material can range from 1 – 3 as required by Applicant (column 11).

As to claim 20, Raidel shows in Figures 19 and 20 a substantially uniform pattern.

As to claim 21, Raidel teaches that the absorbent article can be used as a diaper (column 3, lines 15 – 40).

As to claims 60 – 62, Raidel teaches that the liquid-permeable cover layer can comprise multiple layers (column 11). The Examiner equates one of the multiple layers to Applicant's "additional layer".

As to claims 80 and 82, Figures 19 and 20 show a void volume which exists between the valleys as required by Applicant.

As to claims 22 and 54, Raidel teaches an absorbent article in Figures 19 and 20 comprising an outer cover sheet 201, a pleated cover sheet 203, a pleated absorbent body 205 and a liquid impermeable cover sheet 204 (column 10, lines 45 – 65). See the details of the structure discussed above. Raidel teaches that the absorbent article can be used as a diaper, sanitary napkin and incontinence pads (column 3, lines 15 – 40). It should be noted that the absorbent article, when in use as a diaper, etc., would contain Applicant's "added liquid".

As to claims 28 – 31 and 55 - 57, Raidel teaches that the thickness of the pleated material can range from 1 – 3 as required by Applicant (column 11).

As to claims 33 and 59, Raidel shows in Figures 19 and 20 a substantially uniform pattern.

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As to claim 63, Raidel teaches that the liquid-permeable cover layer can comprise multiple layers (column 11). The Examiner equates one of the multiple layers to Applicant's "additional layer".

As to claims 79 and 81, Figures 19 and 20 show a void volume which exists between the valleys as required by Applicant.

As to claims 83 - 85, Raidel teaches an absorbent article in Figures 19 and 20 comprising an outer cover sheet 201, a pleated cover sheet 203, a pleated absorbent body 205 and a liquid impermeable cover sheet 204 (column 10, lines 45 – 65). The Examiner equates the outer cover sheet 201 and pleated cover sheet 203 to one of Applicant's "bi-layer structures" and the pleated absorbent body 205 and liquid impermeable cover sheet 204 to the other of Applicant's "bi-layer structures". Raidel does not teach or suggest the use of elastic materials or fibers; the Examiner submits that the limitation of having "no elastic materials or fibers between the outer layers" has been met by Raidel. As shown in Figures 19 and 20, Raidel shows the pleated layers as oriented inwardly and having opposing bondable projections. The Examiner equates the pleats to Applicant's "tufts". As shown in Figures 19 and 20, a void volume exists between the valleys as required by Applicant.

As to claim 86, as shown in Figures 19 and 20, Raidel shows the pleated layers as oriented inwardly and having opposing bondable projections. It should be noted that Applicant requires that the projections are "bondable" and does not require that they are actually bonded.

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4. Claims 1, 3 – 8, 11, 16, 20 – 26, 33, 60 – 63, 65 – 68, 71 – 76, 79 and 82 – 86 are rejected under 35 U.S.C. 102(b) as being anticipated by Lloyd et al. (US 4,600,620).

Lloyd is directed to an article suitable for wiping surfaces (Title).

As to claims 1, 5 – 7, 16, 20, 60 – 62, 65 – 67 and 72 – 75, Lloyd teaches a wiping cloth as shown in Figures 2 and 3. The cloth comprises a lower substrate 2 and an upper substrate 3. Each substrate consists of a core 4 of bulky high-porosity fibrous sheet material and carrying on its outer side layer 5 of lightweight thermoplastic sheet material such as a dry-laid polypropylene/viscose rayon nonwoven fabric (column 8, lines 60 – 69). The Examiner equates the outer side layers 5 to Applicant's "nonwoven material" layers and the lower and upper substrates to Applicant's "at least one tufted material layer". The upper outer side layer 5 and the upper substrate 3 can be considered to be one of Applicant's "bi-layers" and the lower outer side layer 5 and lower substrate 2 can be considered to be one of Applicant's other "bi-layers". As shown in the Figures, the lower and upper substrates are configured such that they produce Applicant's "internally tufted" configuration. It should be noted that Lloyd teaches not teach or suggest incorporating elastic materials or fibers between the layers so it is the position of the Examiner that no elastic materials or fibers are present.

As to claims 3, 8, 68 and 76, Lloyd teaches that the lower and upper substrates or Applicant's "tufted material" can comprise a variety of materials. In Table 1, Lloyd teaches using non-woven fabrics which partially comprise polymer materials such as polyester. Lloyd teaches that the outer side layers can comprise a lightweight thermoplastic sheet material such as a dry-laid polypropylene/viscose rayon nonwoven fabric (column 8, lines 60 – 69). The Examiner equates this to Applicant's "coform".

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As to claim 4, Lloyd teaches that the outer side layers can comprise viscose, which is known in the art to an absorbent material.

As to claims 11 and 71, Lloyd shows in the Figures opposing bondable projections. It should be noted that Applicant requires that the projections are “bondable” and does not require that they are actually bonded.

As to claim 21, Lloyd teaches that the article can be a wipe (Abstract).

As to claim 22, 33 and 63, Lloyd teaches a wiping cloth as shown in Figures 2 and 3. The cloth comprises a lower substrate 2 and an upper substrate 3. Each substrate consists of a core 4 of bulky high-porosity fibrous sheet material and carrying on its outer side layer 5 of lightweight thermoplastic sheet material such as a dry-laid polypropylene/viscose rayon nonwoven fabric (column 8, lines 60 – 69). The Examiner equates the outer side layers 5 to Applicant’s “nonwoven material” layers and the lower and upper substrates to Applicant’s “at least one tufted material layer”. The upper outer side layer 5 and the upper substrate 3 can be considered to be one of Applicant’s “bi-layers” and the lower outer side layer 5 and lower substrate 2 can be considered to be one of Applicant’s other “bi-layers”. As shown in the Figures, the lower and upper substrates are configured such that they produce Applicant’s “internally tufted” configuration. It should be noted that Lloyd teaches not teach or suggest incorporating elastic materials or fibers between the layers so it is the position of the Examiner that no elastic materials or fibers are present. Lloyd teaches that the wiping cloth may additionally contain a lubricant or emulsifier among other materials (column 7, lines 5 – 25).

As to claim 23, Lloyd teaches that the wiping cloth may additionally contain a lubricant or emulsifier among other materials (column 7, lines 5 – 25).



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As to claim 24, Lloyd teaches that the wiping cloth may additionally contain a lubricant (column 7, lines 5 – 25). It is the position of the Examiner that the lubricant can function as Applicant's "lotion".

As to claim 25, Lloyd teaches that the article may be a wipe (Abstract). It should be noted that no patentable weight has been given to "personal care" because it has been held that a recitation with respect to the manner in which a claimed article is intended to be employed does not differentiate the claimed article from a prior art article satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

As to claim 26, Lloyd teaches an article made of nonwoven materials. It is known in the art that articles containing nonwoven materials can be considered "disposable" as required by Applicant.

As to claims 79 and 82, Figures 2 and 3 show a small void area is between the opposing valleys. If the Applicant requires that the entire area between the opposing valleys is a void, then the Applicant should amend the claims accordingly:

As to claims 83 - 86, Lloyd teaches a wiping cloth as shown in Figures 2 and 3. The cloth comprises a lower substrate 2 and an upper substrate 3. Each substrate consists of a core 4 of bulky high-porosity fibrous sheet material and carrying on its outer side layer 5 of lightweight thermoplastic sheet material such as a dry-laid polypropylene/viscose rayon nonwoven fabric (column 8, lines 60 – 69). The Examiner equates the outer side layers 5 to Applicant's "nonwoven material" layers and the lower and upper substrates to Applicant's "at least one tufted material layer". The upper outer side layer 5 and the upper substrate 3 can be considered to be one of Applicant's "bi-layers" and the lower outer side layer 5 and lower substrate 2 can be

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considered to be one of Applicant's other "bi-layers". As shown in Figures 2 and 3, a small void area is between the opposing valleys. If the Applicant requires that the entire area between the opposing valleys is a void, then the Applicant should amend the claims accordingly. Lloyd shows in the Figures opposing bondable projections. It should be noted that Applicant requires that the projections are "bondable" and does not require that they are actually bonded.

5. Claims 1, 3 – 11, 16, 20 – 23, 25 – 26 and 65 - 78 are rejected under 35 U.S.C. 102(e) as being anticipated by Curro et al. (US 6,808,791).

Curro is directed to a laminate web useful for absorbent applications such as pads, wipes, etc. (Abstract).

Curro teaches a laminate comprising a first outer ply 20, a central layer 30 and a second outer ply 40 (columns 6 – 7). See Figure 2. The outer layers may comprise nonelastic materials such as meltblown webs of polypropylene, polyethylene, etc. and may be a composite of two or more fibers such as meltblown fibers mixed with wood pulp (column 17, lines 1 – 30). The outer layers may also be multilayered materials (column 17, lines 1 – 30). The Examiner equates a multi-layered first outer ply of a meltblown web and a material of meltblown fibers and wood pulp (coform) to one of Applicant's "bi-layer structures" and a multi-layered second outer ply of a meltblown web and a material of meltblown fibers and wood pulp (coform) to the other of Applicant's "bi-layer structures". As shown in Figure 2, Curro teaches an "internally tufted material" as required by Applicant. It should be noted that, when in use as an absorbent material, the laminate of Curro would contain Applicant's "added liquid". In regards to the limitation of

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“wire-tufted”, it should be noted that the burden is upon the Applicant to show unobvious differences between the tufted material of Curro and Applicant.

***Claim Rejections - 35 USC § 102/103***

6. Claims 87 – 90 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Raidel et al. (WO 96/00625). It should be noted that the Examiner has relied upon Raidel et al. (US 6,171,682) as an English language equivalent of (WO 96/00625).

As to claims 87 – 88 and 90, Raidel teaches an absorbent article in Figures 19 and 20 comprising an outer cover sheet 201, a pleated cover sheet 203, a pleated absorbent body 205 and a liquid impermeable cover sheet 204 (column 10, lines 45 – 65). The Examiner equates the outer cover sheet 201 and pleated cover sheet 203 to one of Applicant’s “bi-layer structures” and the pleated absorbent body 205 and liquid impermeable cover sheet 204 to the other of Applicant’s “bi-layer structures”. The Examiner equates the pleats to Applicant’s “internal tufting”.

As to claim 89, Raidel teaches that the absorbent article can be used as a diaper, sanitary napkin and incontinence pads (column 3, lines 15 – 40). It should be noted that the absorbent article, when in use as a diaper, etc., would contain Applicant’s “added liquid”.

Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the

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same or an obvious variant from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the Applicant to show unobvious differences between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292 (Fed. Cir. 1983). The limitation of “being pulled through a porous forming surface” has not been given any patentable weight at this time. The burden is upon the Applicant to evidence unobvious differences between the composite of Raidel and the Applicant.

7. Claims 87 – ~~9~~0 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lloyd et al. (US 4,600,620).

As to claims 87 – 88 and 90, Lloyd teaches a wiping cloth as shown in Figures 2 and 3. The cloth comprises a lower substrate 2 and an upper substrate 3. Each substrate consists of a core 4 of bulky high-porosity fibrous sheet material and carrying on its outer side layer 5 of lightweight thermoplastic sheet material such as a dry-laid polypropylene/viscose rayon nonwoven fabric (column 8, lines 60 – 69). The Examiner equates the outer side layers 5 to Applicant’s “nonwoven material” layers and the lower and upper substrates to Applicant’s “at least one tufted material layer”. The upper outer side layer 5 and the upper substrate 3 can be considered to be one of Applicant’s “bi-layers” and the lower outer side layer 5 and lower substrate 2 can be considered to be one of Applicant’s other “bi-layers”. As shown in the Figures, the lower and upper substrates are configured such that they produce Applicant’s “internally tufted” configuration.

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As to claim 89, Lloyd teaches that the wiping cloth may additionally contain a lubricant or emulsifier among other materials (column 7, lines 5 – 25).

Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same or an obvious variant from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the Applicant to show unobvious differences between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292 (Fed. Cir. 1983). The limitation of “being pulled through a porous forming surface” has not been given any patentable weight at this time. The burden is upon the Applicant to evidence unobvious differences between the composite of Lloyd and the Applicant.

### ***Claim Rejections - 35 USC § 103***

8. Claims 12 – 15, 28 – 31, 50 – 57 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd et al. (US 4,600,620).

Lloyd teaches a wiping cloth as shown in Figures 2 and 3. The cloth comprises a lower substrate 2 and an upper substrate 3. Each substrate consists of a core 4 of bulky high-porosity fibrous sheet material and carrying on its outer side layer 5 of lightweight thermoplastic sheet material such as a dry-laid polypropylene/viscose rayon nonwoven fabric (column 8, lines 60 – 69). The Examiner equates the outer side layers 5 to Applicant’s “nonwoven material” layers and

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the lower and upper substrates to Applicant's "at least one tufted material layer". The upper outer side layer 5 and the upper substrate 3 can be considered to be one of Applicant's "bi-layers" and the lower outer side layer 5 and lower substrate 2 can be considered to be one of Applicant's other "bi-layers". As shown in the Figures, the lower and upper substrates are configured such that they produce Applicant's "internally tufted" configuration. Lloyd teaches that the wiping cloth may additionally contain a lubricant or emulsifier among other materials (column 7, lines 5 – 25).

As to claims 12 – 15, 28 – 31, 50 - 57, Lloyd discloses the claimed invention except for that each tuft is a projection measuring at least 1 mm in length as required by claims 13, 29, 50 and 54, at least 2 mm in length as required by claims 14, 30, 51 and 55, at least 3 mm in length as required by claims 15, 31, 52, 56 and between 3 and 5 mm in length as required by claims 12, 28, 53 and 57. It would have been obvious to one having ordinary skill in the art at the time the invention was made to create each tuft such that each tuft has a projection measuring at least 1 mm in length as required by claims 13, 29, 50 and 54 at least 2 mm in length as required by claims 14, 30, 51 and 55, at least 3 mm in length as required by claims 15, 31, 52, 56 and between 3 and 5 mm in length as required by claims 12, 28, 53 and 57 since it has been held that where general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F.2d 454 USPQ 233 (CCPA 1955). In the present invention, one would have been motivated to optimize the bulkiness, softness and absorbency of the composite.

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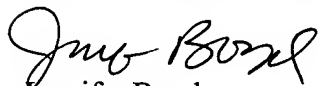
***Response to Arguments***

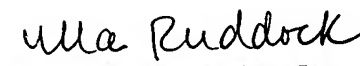
9. Applicant's arguments with respect to claims 1, 3-16, 20-26, 28-31, 33, 40-57, 59-63 and 65-90 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A. Boyd whose telephone number is 571-272-1473. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jennifer Boyd  
December 8, 2005

  
**Ula C. Ruddock**  
Primary Examiner  
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